

Date Issued: April 11, 1984 (AGO 84-20)

Requested by: Larry Quast
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- QUESTION PRESENTED -

Whether a municipality which has financed an electric transmission line through the issuance and sale of revenue bonds pursuant to chapter 40-35 of the North Dakota Century Code has the authority to refinance a portion of that obligation by special assessments.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a municipality which has financed an electric transmission line through the issuance and sale of revenue bonds pursuant to chapter 40-35, N.D.C.C., does not have the authority to refinance a portion of that obligation by special assessments.

- ANALYSIS -

Article VII, Section 2 of the North Dakota Constitution provides:

The legislative assembly shall provide by law for the establishment and the government of all political subdivisions. Each political subdivision shall have and exercise such powers as provided by law.

Section 40-05-01(60), N.D.C.C., provides, in part, that the governing body of a municipality shall have the power:

To make assessments as limited by the laws of this state for local improvements on property adjoining or benefited thereby; to collect the same in the manner provided by law. . . .

The general authority of a municipality to provide for the payment of the cost of improvements by special assessments is set out in chapters 40-22 through 40-27, N.D.C.C. Although authority is granted to a municipality in these chapters to issue refunding bonds for the purpose of refinancing outstanding special assessment warrants, no authority is given to a municipality to issue refunding special assessment warrants for the purpose of refinancing outstanding revenue bonds.

Section 40-35-03, N.D.C.C., in part, authorizes a municipality to construct, operate and maintain any "undertaking". As defined in section 40-35-02, N.D.C.C., the term "undertaking" includes an electric transmission line.

Sections 40-35-03(3) and (4), N.D.C.C., provide that a municipality has the power to:

* * *

3. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by such undertaking,

and in anticipation of the collection of the revenues of such undertaking, issue revenue bonds to finance in whole or in part the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking.

4. Pledge to the punctual payment of said bonds and the interest thereon all or any part of the revenues of such undertaking, including the revenues of improvement, betterment, or extensions thereof which may be constructed or acquired subsequent to the issuance of such bonds as well as the revenues of existing systems, plants, works, instrumentalities, and properties of the undertaking so improved, bettered, or extended, or of any part of such undertaking.

* * *

Section 40-35-14, N.D.C.C., provides that revenue bonds issued under the authority of that chapter are not payable from or constitute a charge upon any funds other than the revenue pledged to the payment of the bonds. Furthermore, the bonds may not constitute a charge, lien, or incumbrance upon any property of the issuing municipality.

There is no provision in any of the foregoing sections or in any other section set out in chapter 40-35, N.D.C.C., which provides for the refinancing of revenue bonds. Section 40-36-03, N.D.C.C., does provide that a municipality may refinance an enterprise by borrowing money and by issuing refunding bonds. However, there is no provision in chapter 40-36, N.D.C.C., which provides for the refinancing of revenue bonds by special assessments.

In addition to the authority given to a municipality to issue revenue bonds in chapter 40-35, N.D.C.C., authority is also given to a municipality in chapter 40-33, N.D.C.C., to issue either special assessment warrants or bonds, or both, to provide for the payment of the cost of financing an electric transmission line. Again, however, there is no authority given a municipality in chapter 40-33, N.D.C.C., to provide for the refinancing of bonds by the issuance of special assessment warrants.

Therefore, it is my opinion that a municipality which has issued and sold revenue bonds pursuant to chapter 40-35, N.D.C.C., to finance an electric transmission line, does not have the authority to refinance a portion of that obligation by special assessments.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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